

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 2068 of 2000

and

CRIMINAL MISC. APPLICATION No 2069 of 2000

and

CRIMINAL MISC. APPLICATION No 2070 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ASSOCIATED PESTICIDES

Versus

MEGHMANI ORGANICS LTD.

Appearance:

MR RAJEEV I CHOPRA for Petitioners
MR FB BRAHMBHATT for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/08/2000

COMMON ORAL JUDGEMENT

#. At the request and consent of learned counsels for the parties, these 3 matters have been heard together and they are being disposed of finally by this common judgment and order.

#. It is a common question of fact that in all the three matters, the present respondents are creditors and the present applicants are debtors, therefore, the applicants were required to pay the amount as per dues of the respondents. Accordingly, 3 cheques were issued on 26.11.98 by the present applicants in favour of the respondents. It is an admitted position that all the three cheques were dishonoured on 10.12.98 on the ground of 'insufficient funds'. The total amount of the said 3 cheques is Rs.11,00,000/=. Therefore, notices were issued to the petitioners by the respondents on 17.12.98. As per the case of the petitioners notices issued to them under Certificate of Posting were received by them on 28.12.98. Thereafter it is an admitted position that the petitioners made payment of the cheque amount of Rs.11,00,000/= by demand draft on 5.1.99. Thereafter 3 complaints have been filed by the present respondents before the learned Metropolitan Magistrate Court, No.15 at Ahmedabad on 8.2.99 for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It seems that the complaints were registered and process was issued.

#. Feeling aggrieved by the said order for issue of process, the petitioners have filed these petitions for quashing and setting aside the said 3 complaints pending before the learned Metropolitan Magistrate at Ahmedabad.

#. It has been contended by the learned advocate for the petitioners that the petitioners have made payment of cheques on 5.1.99 and, therefore, the complaints filed subsequent to the said payment are not maintainable and are therefore required to be quashed and set aside. On service of notice learned advocate appeared for the contesting-respondents before the court. Mr.K.G.Sheth, learned A.P.P. appeared on behalf of the State in Misc. Criminal Application No.2068 of 2000 and Mr.S.K.Patel, learned A.P.P. for the State in Misc. Criminal Application Nos. 2069 and 2070 of 2000.

#. I have heard all of them and the matters are being

finally disposed of on hearing them.

#. It is an admitted position that 3 cheques were issued for a total sum of Rs.11,00,000/= on 26.11.98 and also it is an admitted position that the cheques were presented within 6 months from the date of issuance of cheques. It is also an admitted position that the cheques were dishonoured on 10.12.98 on the ground of 'insufficient funds.' It is also an admitted position that the contesting respondents issued notice on 17.12.98 and the notices sent by Registered Post A.D. could not be served upon the petitioners and there is no dispute about the same.

#. However, the petitioners have come up with a case that the notices were received by them on 20.12.98. According to them the contesting-respondents had also issued notice under Certificate of Posting and that notices were received on 28.12.1998 and thereafter payment was made in full on 5.1.99. On this strength, it has been submitted that the payment was made before filing of the complaints and, therefore, the complaints are not maintainable and they are required to be quashed and set aside.

#. On the aforesaid facts, it is very clear that the notices issued by Registered Post A.D. have not been served. The petitioners have come up with a case that the notices issued to them under Certificate of Posting have been received by them on 28.12.1998.

#. The learned advocate for the contesting respondent submits that it is a matter of evidence and, therefore evidence is required to be produced on record to show as to the service of the notice. He also submits that the postman is required to be examined to prove the aforesaid event.

##. Now, the notices served upon the petitioners were not issued under Registered Post A.D. They are the notices issued under Certificate of Posting. Now there would be no record with the postman to show as to the date on which the said notices were actually served upon the petitioners. The said event took place in December, 1998 and it may not be possible even for the postman to remember as to the date on which he went to the residence or office premises of the petitioners. Therefore, the examination of postman will not be or fruitful in the present case.

##. Then there would be no evidence on the record with

the contesting respondent to prove the date of service of notice upon the petitioners, which was sent to them under Certificate of Posting. Therefore, this is a matter in which it may not be possible even for the contesting respondent to prove that the notices were served upon the petitioners on a date earlier than the date stated by the petitioners.

##. Anyway the fact remains that the payment has been made on 5.1.99 i.e. prior to filing of the complaint.

##. Then we have come across an observation made in para 10 of a recent decision of Hon'ble Supreme Court in the case of Suman Shetty Vs. Ajay K Churiwal reported in 2000 Criminal Law Journal 1391 wherein it has been observed as follows :-

"If the cheque amount is paid within the above period or before the complaint is filed the legal liability under Section 138 will cease and for recovery of other demands as compensation, costs interest, etc. a civil proceeding will lie. Therefore, if in a notice any other sum is indicated in addition to the "said amount" the notice cannot be faulted."

##. It is, therefore, clear that if the complaint is filed after receipt of amount of cheques then said complaint would not be maintainable, in view of the aforesaid observations of the Hon'ble Supreme Court. The reason is that as per the said observation the legal liability under Section 138 of the Negotiable Instruments Act will cease and, therefore, the only remedy open to the creditor would be to file civil suit. In the present case, the contesting respondent is reported to have filed Civil Suit also therefore the contesting respondent can contest the civil litigation for the recovery of the said amount.

##. Anyway, I am of the view that when the amount has been paid in full, subsequent institution of complaint would not be justifiable in the eye of law and in the view of the aforesaid observation of the Hon'ble apex court.

##. Even the learned APP appearing on behalf of the State in these 3 matters also stated that when the amount of cheque has been paid up in full it would not be just, proper and legal to allow further prosecution of the

aforesaid 3 complaints. In that way they supported the case of the petitioners. In the aforesaid view of the matter and when the amount has been paid in full, it would not be just and proper to allow further prosecution against the petitioners in aforesaid 3 criminal cases. Therefore, with a view to prevent abuse of process of the court and with a view to have substantial justice in the matter, the present petitions are required to be allowed and the complaints are required to be quashed. At the same time it is hoped that when parties are at civil suit and when a sizable amount has been paid up by the petitioners by demand draft on 5.1.99 then in that event parties can sit across the table and have a solution with respect to their disputes.

##. These petitions are accordingly allowed and the criminal complaints filed before the learned Metropolitan Magistrate Court No.15 being Criminal Cases Nos. 426, 427 and 428 of 1999 are ordered to be quashed and the said court is prevented from prosecuting the present petitioners in the said 3 criminal cases. D.S. is permitted. Rule is made absolute.

(D.P.Buch, J.)

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